ATTACHMENT A
Remarks

Claims 1-14 and 19-35 are now present in this application. These include previous claims 1-14 and 19-21, and new claims 22-35. Non-elected claims 15-18 have been canceled without prejudice.

As explained in the specification, the present invention relates to distracting adjacent vertebrae away from each other and/or retaining separated vertebrae in such separated position. As further explained in the specification, such distraction/retention requires that anchor screws be screwed into the adjacent vertebrae. Instruments must then be provided for interacting with these anchor screws to separate the vertebrae or retain them apart. It has been known heretofore to engage these anchor screws with arms, the opposite ends of which engage a connecting member for moving the arms and hence also the anchor screws and hence also the adjacent vertebrae apart or retain them apart. However, as further explained in the specification, known instruments have had the disadvantage that the engagement between the arms and the anchor screws was not sufficient secure to assure that the anchor screws would maintain their original alignment. When such screws would become misaligned, they would cause the instrument to jam after which the instrument could not successfully perform its intended function of separating the vertebrae by a predetermined amount and/or accurately retaining them in that selected spaced part position.

In one prior arrangement, as described in the specification, the arms included tubes which encircled the anchor pins. However, this arrangement was relatively loose and as a result, the anchor screws and tubes would become misaligned, causing the above noted disadvantages.

The present invention has overcome the disadvantages of the prior art by providing a secure engagement between the arms and the anchor screws, sufficiently secure that as the arms are moved apart, the anchor screws maintain their original alignment.

New independent claim 22 positively recites this inventive arrangement by providing the anchor screws and a frame member with arms which have an engaging structure for operatively engaging the anchor screws and comprising a retaining structure to essentially prevent movement of the anchor screws relative to the engaging structure. Dependent claims 23-35 recite more specific features of the present invention.

Independent claim 1 also recites specific features of the present invention including a frame member having arms which include a tube encircling the screws and a retaining structure for securing each of the anchor screws to its respective tube. Dependent claims 2-14 and 19-21 recite additional features of the present invention.

Each of independent claims 1 and 22 recite inventive features of the present invention which distinguish in a patentable sense over both of the applied references, taken alone or together.

The Patel et al Publication 2004/0204710 (hereinafter "Patel") has absolutely nothing to do with the present invention, as claimed in claim 1 or claim 22. Patel does not show anchor screws. Patel has nothing to do with engaging anchor screws to distract adjacent vertebrae or to retain them apart. The tubes of Patel are for engaging a spinal fixation plate, not the spines themselves and the tubes are adapted to receive tools. It would therefore be entirely inappropriate to stretch the teachings of Patel far

beyond what they remotely show or suggest to hold that Patel anticipates or renders obvious claims directed to the totally different invention of securing anchor screws while engaged with the adjacent vertebrae for the purpose of maintaining such anchor screws in proper alignment during distraction/retention. In summary therefore, Patel provides no teaching whatsoever for rejecting any of the claims in this application under § 102 or § 103.

Certain claims were further rejected as being obvious based on Patel in view of the Michelson U.S. Patent No. 5,059,194.

As noted above, Patel has nothing to do with anchor screws and nothing to do with instruments for holding anchor screws for distraction or retention. Thus, for openers this obviousness rejection is defective because of the complete lack of relevance of the primary reference.

Michelson does not show anchor screws and hence Michelson cannot begin to provide the numerous features which are missing from Patel. For example, Michelson shows a set of four legs which are constructed to enter into the intervertebral space, not be screwed into the adjacent vertebrae. Thus, even if Michelson does show threaded knobs 42, 44 at the ends of legs 26, 28, such knobs are completely irrelevant because they are not engaging anchor screws. The purpose of the present invention in engaging anchor screws is to secure these screws during movement. Legs which enter into an intervertebral space are altogether different from anchor screws and hence placing a threaded knob at the end of such legs does not remotely suggest solving the problems associated with the present invention of securing anchor screws which are engaged with vertebrae.

The specification has been amended to provide antecedent basis for some new terminology in the new claims and they in no way add new matter.

In view of the above, it is respectfully submitted that this application is now in condition for allowance, which action is promptly and respectfully solicited.

END REMARKS